



CITY OF  
BAINBRIDGE ISLAND

**Office of the City Attorney**  
**Memorandum**

Date: May 24, 2019

To: City Council; Morgan Smith, City Manager

From: Robbie Sepler, Deputy City Attorney

Re: Effect of Proposed Ordinance No. 2019-04 on Sandwich Board Signs and Temporary Signs

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**I. Introduction.**

Ordinance No. 2019-04 proposes changes to how sandwich board signs and temporary signs are regulated under the City's sign code. The intent of this memo is to provide the City Council and the community with a better understanding of how Ordinance No. 2019-04, as currently drafted, would affect sandwich board signs and temporary signs.

If adopted, Ordinance No. 2019-04 would also update the City's sign code in accordance with the U.S. Supreme Court's decision in *Reed v. Town of Gilbert*. The overall take away from the *Reed* case is that a sign code cannot regulate noncommercial signs based on the message conveyed on the sign (e.g., political signs, ideological signs, event signs, etc.). In other words, a sign code cannot require that all "political signs" be a certain size, because to enforce such a regulation the sign itself needs to be read to determine if it displays a "political" message.

This memo concludes with several discussion points for the City Council to consider.

**II. Sandwich Board Signs.**

**A. What is a "Sandwich Board"?**

Under Ordinance No. 2019-04, a sandwich board is a sign which consists of two panels hinged or attached at the top or side, designed to be movable and stand on the ground. Here are examples of signs that constitute "sandwich boards" for the purposes of Ordinance No. 2019-04:



## **B. How Does the Current Sign Code Regulate Sandwich Boards?**

The following types of sandwich board signs are allowed under the City’s current sign code:

1. One on-site commercial sandwich board sign per business with a sign permit;
2. Temporary off-site commercial sandwich board signs, with a sign permit, displayed for a maximum of 36 days in a 12-month period; and
3. Temporary off-site noncommercial sandwich board signs without a sign permit.

In summary, a sandwich board is “commercial” if the sign is related solely to the economic interests of the owner of the sign and its audience. If not, then it is noncommercial.

## **C. How Does Ordinance No. 2019-04 Propose to Regulate Sandwich Boards?**

If adopted, Ordinance No. 2019-04 would allow the following types of sandwich board signs during a six-month transition period, after which all sandwich board signs would be prohibited:

1. One on-site commercial sandwich board sign per business with a sign permit; and
2. Temporary off-site commercial sandwich board signs, with a sign permit, displayed for a maximum of 36 days during the six-month transition period.

In a departure from the City’s current sign code, all noncommercial sandwich board signs would be prohibited under Ordinance No. 2019-04.

#### D. What Do On-Site Commercial Sandwich Board Signs Look Like?

These are sandwich boards that are placed on the same property as the business that they advertise. The sandwich boards in the photo below reference businesses located on the same property and such sandwich boards are not placed in the City's right-of-way. Under Ordinance No. 2019-04, the owners of the sandwich boards below could apply for a sign permit to display the sandwich boards during the six-month transition period. After the six-month transition period, these sandwich boards would be prohibited.





## E. What Do Off-Site Commercial Sandwich Board Signs Look Like?

These are sandwich boards that are not placed on the same property as the businesses advertised on the sandwich boards. Under Ordinance No. 2019-04, the owners of the sandwich boards below could apply for a sign permit to display the sandwich boards for a maximum of 36 days during the six-month transition period. After the six-month transition period, these sandwich boards would be prohibited.



## **F. What About Other Portable Signs?**

There are many types of signs that, like sandwich boards, are readily moveable, freestanding, and not permanently affixed to the ground, such as the following:



Under Ordinance No. 2019-04, such signs would be prohibited, except for such signs owned and placed by a public agency, like the following sign:



### III. Temporary Signs.

#### A. What Are “Temporary Signs”?

In the context of Ordinance No. 2019-04, “temporary signs” are signs that have a similar construction to the signs shown below:



#### B. How Does the Current Sign Code Regulate Temporary Signs?

The City’s current sign code does not specifically regulate a single category of “temporary signs.” Instead, the City’s current sign code regulates a number of types of signs based on content, specifying some limitations on how long certain types of signs may be displayed. Under *Reed v. Town of Gilbert*, the City may no longer use such an approach to regulate signs.

#### C. How Does Ordinance No. 2019-04 Propose to Regulate Temporary Signs?

Ordinance No. 2019-04 proposes a new category of “temporary signs,” with different regulations depending on whether the temporary sign is commercial or noncommercial. Specifically:

- Temporary signs that are “commercial” are prohibited; and
- Temporary signs that are “noncommercial” are allowed, with some restrictions based on where they are placed.

##### i. How do I know if my temporary sign is commercial?

A temporary sign is commercial if the sign is related solely to the economic interests of the owner of the sign and its audience. Here are some examples of temporary signs that are commercial and would therefore be prohibited under Ordinance No. 2019-04:





ii. **How do I know if my temporary sign is noncommercial?**

Temporary signs are noncommercial if the sign relates to more than just the economic interests of the owner of the sign and his/her audience. Here are some examples of temporary signs that are noncommercial and would therefore be allowed under Ordinance No. 2019-04, with some restrictions based on where they are placed:





Specifically, the following types of temporary signs are noncommercial and would therefore be allowed under Ordinance No. 2019-04:

- A sign for a youth-sports signup put out by a government agency (e.g., School District or Park District) or a nonprofit corporation;
- Fundraising signs put out by a religious organization or a nonprofit corporation;
- An event sign put out by a government agency or nonprofit corporation, provided that the sole reason for the sign isn't the economic interest of the owner of the sign; and
- Political signs, supporting or opposing a candidate or ballot measure.

#### IV. Discussion Points for the City Council.

- Does the City Council desire to set a public hearing on Ordinance No. 2019-04 as currently drafted?
- If not:
  - Does the City Council have concerns with the proposed changes to how sandwich boards would be regulated?
  - Does the City Council have concerns with the proposed changes to how temporary signs would be regulated?